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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-  
GOMEZ; STEVE KARAGIOSIAN;  
ELFEGO RODRIGUEZ; AND JAMAL  
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK; AND DOES 1 THROUGH  
100, INCLUSIVE.

Defendants.

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge  
Dept. 37

Complaint Filed: May 28, 2009

PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION *IN LIMINE* NO. 10  
TO EXCLUDE (A) EVIDENCE OR  
ARGUMENT RE OFFICER BEING  
NICKNAMED "HITLER"; AND (B)  
TESTIMONY OF BRUCE SLOR RE:  
RACIAL/ETHNIC SLURS

Final Status Conference:

DATE: June 8, 2011  
TIME: 9:00 a.m.  
DEPT: 37

Trial Date: April 13, 2011

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1 worse still, [has] retaliated against complainants, future victims will have a strong  
2 argument that the policy and grievance procedure did not provide a 'reasonable  
3 avenue' for their complaints." ( Id. at p. 699.)

4 (*State Dept. of Health Services, supra*, at pp.1045-1046, emphasis added.)

5 The court continued:

6 A conscientious employer will quickly stop the misconduct of which it becomes aware.  
7 Prompt employer intervention not only minimizes injury to the victim, but also sends a clear  
8 message throughout the workplace that harassing conduct is not tolerated. Employers who  
9 take seriously their **legal obligation** to prevent harassment are an employee's best protection  
10 against workplace harassment.

11 (*Id.* at p.1049, emphasis added.)

12 Thus, under *State Dept. of Health Services*, "the trier of fact may appropriately consider"  
13 previous acts of harassment directed both at Plaintiff **and at others**, and Defendant's responses  
14 thereto.

15 If "[e]vidence potentially relevant to the avoidable consequences defense includes **anything**  
16 tending to show that the employer took effective steps 'to encourage victims to come forward with  
17 complaints of unwelcome [harassment] and to respond effectively to their complaints,'" then it  
18 follows that relevant evidence also includes **anything** that shows that the employer failed "to  
19 encourage victims to come forward with complaints of [harassment] and to respond effectively to  
20 their complaints." This includes evidence of previous acts of harassment toward Plaintiff **and**  
21 **others** and Defendants responses thereto.

22 Furthermore, one of the policies behind FEHA is to deter future harassment by the same  
23 offender or others by prompt effective action. In *Doe v. Starbucks, Inc.* (C.D. Cal. Dec. 18, 2009)  
24 2009 U.S. Dist. LEXIS 118878, the court explained:

25 Section 12940(k) requires that an employer take all reasonable steps necessary to prevent  
26 harassment. In an analogous Title VII situation, the Ninth Circuit has held that "[o]nce an  
27 employer knows or should know of harassment, a remedial obligation kicks in. That  
28 obligation will not be discharged until action - prompt, effective action - has been taken.

Effectiveness will be measured by the twin purposes of ending the current harassment and deterring future harassment - **by the same offender or others.**" *Fuller v. City of Oakland*, 47 F.3d 1522, 1528 (9th Cir. 1995) (citations omitted). "The affirmative and mandatory duty to ensure a discrimination-free work environment requires the employer to conduct a prompt investigation of a discrimination claim." *Am. Airlines, Inc. v. Superior Court*, 114 Cal. App. 4th 881, 890, 8 Cal. Rptr. 3d 146 (2003), reh'g denied and review denied 2004 Cal. App. LEXIS 147 (2004).

(*Doe v. Starbucks, Inc.*, *supra*, at pp. 34-35, emphasis added.)

This policy to deter future harassment, by the same offender or others by prompt effective action, places in issue whether past instances of harassment, whether directed toward plaintiff or others, were met with prompt effective action. Thus, instances of past harassment directed toward individuals other than Plaintiff, and Defendant's responses thereto, are admissible.

Thus, Defendant's motion should be denied.

### **III. DEFENDANT'S MOTION RE SLOR'S TESTIMONY IS IMPROPER**

In *Kelly v. New West Federal Savings* (1996) 49 Cal. App. 4th 659, the defendant filed motions in limine "to exclude evidence of prior incidents unless an appropriate foundation was established," among others. (*Kelly, supra*, at p. 670.) The court held that such motions are improper, stating:

[M]any of the motions filed by Amtech were not properly the subject of motions in limine, were not adequately presented, or sought rulings which would merely be declaratory of existing law or would not provide any meaningful guidance for the parties or witnesses. For example . . . Motions No. 8, 20 and 21 sought to exclude evidence of prior incidents unless an appropriate foundation was established to show the relevance of such evidence or that the prior incidents were similar in nature to the incident involved in the suit.

(*Kelly v. New West Federal Savings* (1966) 49 Cal. App. 4th 659, 670.)

The court explained:

"Under appropriate circumstances, a motion in limine can serve the function of a 'motion to exclude' under Evidence Code section 353 by allowing the trial court to rule on a **specific**

1 objection to particular evidence. . . . [P] In other cases, however, a motion in limine may not  
2 satisfy the requirements of Evidence Code section 353. For example, it may be difficult to  
3 specify exactly what evidence is the subject of the motion until that evidence is offered.  
4 Actual testimony sometimes defies pretrial predictions of what a witness will say on the  
5 stand. Events in the trial may change the context in which the evidence is offered to an  
6 extent that a renewed objection is necessary to satisfy the language and purpose of Evidence  
7 Code section 353. As we observed in *People v. Jennings* [(1988) 46 Cal. 3d 963 (251 Cal.  
8 Rptr. 278, 760 P.2d 475)], 'Until the evidence is actually offered, and the court is aware of its  
9 relevance in context, its probative value, and its potential for prejudice, matters related to the  
10 state of the evidence at the time an objection is made, the court cannot intelligently rule on  
11 admissibility.' (46 Cal. 3d at p. 975, fn. 3.) In these kinds of circumstances, an objection at  
12 the time the evidence is offered serves to focus the issue and to protect the record." ( *People*  
13 *v. Morris*, *supra*, 53 Cal. 3d at pp. 188-190.)  
14 (*Id.* at p. 671, emphasis added.)

15 Likewise, this court cannot "rule in a vacuum" and Defendant's motion should therefore be  
16 denied.

17 **IV. DEFENDANT HAS FAILED TO SHOW ANY**  
18 **REAL PROBABILITY OF UNDUE PREJUDICE**

19 Local Rules require the moving party to include in any motion *in limine* a declaration that  
20 includes a "statement of the specific prejudice that will be suffered by the moving party if the motion  
21 is not granted." (Local Rule 8.92(a)(3).) There is no such statement of prejudice, specific or  
22 otherwise, in the Declaration of Philip L. Reznik accompanying Defendant's motion. Defendant's  
23 motion should therefore be denied.

24 Defendants argument that such evidence should be excluded because it would be unduly  
25 prejudicial is unpersuasive. *Bihun v. AT&T Information Systems, Inc.*(1993) 13 Cal. App. 4th 976,  
26 was a sexual harassment action in which the defendant moved to exclude evidence of his  
27 relationships with women at work on the grounds that such evidence was unduly prejudicial under  
28 Evidence code §352. The court disagreed, stating:

1 While the challenged evidence may have supported the testimony of [plaintiffs], it is not  
2 "unduly prejudicial" for that reason. "The 'prejudice' referred to in Evidence Code section 352  
3 applies to evidence which uniquely tends to evoke an emotional bias against defendant as an  
4 individual and which has very little effect on the issues. . . . 'Prejudicial' is not synonymous  
5 with 'damaging.' " (People v. Yu (1983) 143 Cal.App.3d 358, 377 [191 Cal.Rptr. 859].) We  
6 fail to see how a plaintiff can prosecute an action for sexual harassment against a corporate  
7 employer without introducing evidence of sexual harassment by an employee. To say this  
8 evidence is unduly prejudicial because it "brands" the employee as an "harasser" is like  
9 saying evidence the defendant committed a murder is unduly prejudicial because it "brands"  
10 the defendant as a "murderer."

11 (*Bihun*, *supra*, at pp. 989-990, disapproved on other grounds in *Lakin v. Watkins Associated*  
12 *Industries* (1993) 6 Cal. 4th 644, 664.)

13 Likewise, in the case at bar, evidence that Burbank Police officers used racial slurs is not  
14 unduly prejudicial just because it support Plaintiff's claim that he was harassed for being an  
15 Armenian. It is also not prejudicial just because is it supports Plaintiff's claims that Defendants  
16 failed to take reasonable steps to prevent harassment.

17 Defendants' motion should therefore be denied.

18  
19 DATED: May 25, 2011

LAW OFFICES OF RHEUBAN & GRESEN

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21 By: Steven M. Cischke  
22 Steven M. Cischke  
23 Attorneys for Plaintiff, Steve Karagiosian  
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